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5 Attorneys for Defendant

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

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11 PAULA LABRIE, ALFREDO MACIAS,  
PETER MILLMAN, TOM CHORTABTIM,  
12 RAF SISON,

13 Plaintiffs,

14 vs.

15 UPS SUPPLY CHAIN SOLUTIONS, INC.,

16 Defendant.

CASE NO. 3:08-CV-03182 PJH

**DECLARATION OF JACKIE  
SEGUERRA IN SUPPORT OF  
DEFENDANT'S MEMORANDUM OF  
LAW IN OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
CONDITIONAL CLASS  
CERTIFICATION**

Date: March 18, 2009  
Time: 9:00 a.m.  
Judge: Honorable Phyllis J. Hamilton  
Courtroom: 3, 17th Floor

1 I, Jackie Seguerra, declare:

2 1. I have personal knowledge of the facts set forth in this declaration and, if called  
3 upon to do so, could and would testify competently to them.

4 2. I am the Service Parts Logistics Transportation Division Manager at UPS Supply  
5 Chain Solutions, Inc. ("SCS"). I have held this position since November 2006. Prior to that  
6 time, I held the position of Division Manager at SCS and its predecessor companies.

7 3. As the Service Parts Logistics Transportation Division Manager for SCS, I am  
8 responsible for coordinating all transportation activities for SCS' Service Parts Logistics product.  
9 I also manage SCS' relationships with transportation service providers across the United States,  
10 including the independent contractor couriers at issue in this case.

11 4. SCS is a subsidiary of United Parcel Service, Inc. It is a sister company to UPS  
12 "Brown," the package delivery company. The two are separate, wholly-owned subsidiaries of the  
13 same parent company, United Parcel Service, Inc.

14 5. SCS is the only fully-integrated logistics company in the world. SCS manages  
15 other companies' supply chains (i.e., inventories), from the assembly line to the customer's  
16 locations, and does everything related to moving and storing goods for its customers around the  
17 world.

18 6. SCS was formed through the acquisition and combination of over 30 different  
19 logistics, warehousing, freight forwarding, customs brokerage, and transportation companies into  
20 one business. SCS has hundreds of distribution centers through the United States and abroad.  
21 Each of these distribution centers houses the scores of service offerings that SCS provides to its  
22 customers.

23 7. SCS provides a variety of logistics solutions, including designing and  
24 reengineering companies' supply chains, managing relationships with international and domestic  
25 suppliers, improving product design, developing and improving planning and procurement  
26 processes, facilitating compliance with international trade agreements and regulations, and  
27 transporting and storing goods worldwide. In sum, SCS provides an integrated global network of  
28 logistics, consulting, international trade, warehousing, and transportation services.

1           8.       In moving customer's products from the assembly line to the ultimate user, SCS  
2 utilizes a variety of independent transportation entities, including shipping lines, railroads,  
3 independent trucking companies, independent truckers, delivery companies, and independent  
4 contractor couriers. None of these transportation entities are owned, operated, or controlled by  
5 SCS. They are all independent contractors.

6           9.       The Plaintiffs in this case, Paula LaBrie, Alfredo Macias, Peter Millman, Tom  
7 Chortabtim, and Raf Sison, are former independent contractor couriers who provided expedited  
8 pick-up and delivery services for SCS's Service Parts Logistics unit.

9           10.      Service Parts Logistics ("SPL") is one of SCS' many service offerings. The SPL  
10 service is designed to reduce service costs for companies, and accelerate the movement of  
11 replacement parts, or parts needed for repairs. The SPL unit maintains inventories of replacement  
12 parts for customers, and coordinates the delivery of parts in the most efficient manner. For  
13 example, a computer manufacturer might use SPL to manage the distribution of replacement parts  
14 to end-users. If a customer of the computer manufacturer needed a replacement part, SCS would  
15 locate the part in a distribution center or warehouse and arrange for the most efficient method of  
16 delivery. Depending on the delivery deadline, SCS might arrange multi-day, next day or same  
17 day delivery service.

18           11.      When SCS needs to make time-sensitive, same-day deliveries of service parts, it  
19 either contacts independent delivery companies or independent contractor couriers. Less than  
20 10% of the SPL unit's transportation of service parts is done by independent contractor couriers.  
21 SCS sets no requirements on when couriers must be available, and couriers always have the  
22 option of accepting or declining any job offered by SCS. Couriers are always paid by the job—  
23 either by the mile for longer runs or a fixed rate for shorter deliveries.

24           12.      Couriers who make deliveries for SCS receive all of their jobs from SCS  
25 dispatchers. When SCS receives delivery orders from customers, dispatchers contact local  
26 couriers who have indicated that they are available for deliveries that day. On days when a  
27 courier decides to work, the courier calls the active dispatch office, which may be local or in a  
28 different state, to let them know he or she is available for deliveries. The dispatcher places the

1 courier's name on a list on a first-come, first-served basis. When the courier's name reaches the  
2 top of the list, the dispatcher calls the courier and offers a delivery job. If the courier declines the  
3 job, the dispatcher contacts the next courier on the list, until he or she finds a courier who agrees  
4 to make the delivery. If the courier accepts the job, he or she picks up the part, delivers it, and  
5 ensures that the requisite paperwork is signed. The courier can then get back on the available list  
6 again by calling a dispatcher.

7 13. In the three years preceding the filing of the complaint, over 2500 couriers, from  
8 45 different states and the District of Columbia, made deliveries for SCS. SCS has employed  
9 over 200 different individuals in multiple locations to dispatch SPL delivery assignments to  
10 couriers during that time period.

11 14. All independent contractor couriers who make deliveries for SCS sign an  
12 Independent Contractor Transportation Agreement that describes the terms of their relationship  
13 with SCS. All SCS couriers sign the same or a similar contract. Throughout the years, SCS has  
14 updated its contracts and required couriers to sign new agreements.

15 15. Attached hereto as Exhibit 1 is a true and correct copy of SCS' current  
16 Independent Contractor Transportation Agreement. Couriers throughout the United States have  
17 signed this agreement since SCS implemented the agreement in 2005.

18 16. Attached hereto as Exhibit 2 is a true and correct copy of SCS' prior Independent  
19 Contractor Transportation Agreement, which was implemented in 2001. Couriers throughout the  
20 United States signed this agreement from 2001 to 2005.

21 17. In March 2005, SCS implemented a policy governing dispatchers' interactions  
22 with couriers, a true and correct copy of which is attached hereto as Exhibit 3. SCS periodically  
23 distributes Exhibit 3 to dispatchers and their supervisors, and requires them to sign an  
24 acknowledgment form indicating that they have received the policy and will comply with it.

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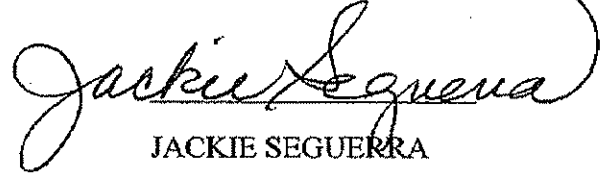
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1 I declare under penalty of perjury under the laws of the United States that the foregoing is  
2 true and correct.

3 Executed this 20 day of JANUARY, 2009, at RANCHO CUCAMON, CA California.  
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6 JACKIE SEGUERRA  
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# **EXHIBIT 1 TO SEGUERRA DECLARATION**

Vendor # \_\_\_\_\_  
 Airport Code \_\_\_\_\_  
 Agreement # \_\_\_\_\_

**UPS Supply Chain Solutions, Inc.  
 Independent Contractor Transportation Agreement**

This Independent Contractor Transportation Agreement ("Agreement") is entered into between \_\_\_\_\_, located at \_\_\_\_\_ ("Contractor"), and UPS Supply Chain Solutions, Inc. located at 12380 Morris Road, Alpharetta, Georgia 30005 ('SCS'), as of the Effective Date set forth below.

**WITNESSETH**

WHEREAS, SCS is engaged in the business of service parts logistics, which performs pick-up and delivery service in the vicinity of Contractor;

WHEREAS, Contractor is willing and able to render such pick-up and delivery service to SCS.

NOW, THEREFORE, it is mutually agreed between the parties as follows:

*Agreement for Services. This Agreement sets forth the terms and conditions under which Contractor shall provide certain services as further described in the attached Exhibits:*

Exhibit A	Terms and Conditions
Exhibit B	Payment
Exhibit C	Service Specifications
Exhibit D	Payment Process

This Agreement, including the attached Exhibits, which are incorporated herein by reference, sets forth the entire understanding and agreement of the parties and supersedes any and all prior or contemporaneous agreements or understandings, written or oral, between the parties as to the subject matter of this Agreement. Each document comprising this Agreement, including the attached Exhibits, shall be read, to the extent possible, in a manner consistent with one another. If the terms of any of such documents are irreconcilable, the more specific provision shall take precedence over the more general provision. No modification of, or amendment to, this Agreement shall be effective unless in writing and signed by each of the parties.

BY SIGNING BELOW, EACH SIGNATORY TO THIS AGREEMENT WARRANTS AND REPRESENTS THAT SUCH SIGNATORY HAS READ AND UNDERSTOOD THE TERMS AND CONDITIONS OF THIS AGREEMENT, HAS HAD THE OPPORTUNITY TO AVAIL ITSELF OF COUNSEL IN CONNECTION WITH ITS REVIEW AND NEGOTIATION OF THIS AGREEMENT, AND THAT SUCH SIGNATORY HAS FULL AUTHORITY AND LEGAL CAPACITY TO EXECUTE THIS AGREEMENT INTENDING TO LEGALLY BIND THE PARTIES HERETO.

**UPS SUPPLY CHAIN SOLUTIONS, INC.**

**CONTRACTOR**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

DL#/State: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Subject to Section 17 of Exhibit A (Terms and Conditions), the Effective Date is: \_\_\_\_\_



**Exhibit A**  
**UPS Supply Chain Solutions, Inc.**  
**Terms and Conditions**

**1. CONTRACTOR'S SERVICES.** Contractor agrees that it shall, during the term of this Agreement, perform all such pick-up/delivery services, and/or parts exchange services (collectively, the "Services"), as may be requested by SCS in connection with the operation of the business of SCS, or of any and all of its affiliates, as SCS may designate. Furthermore it is understood and agreed that Contractor shall maintain and exercise full control over the Services performed by Contractor on behalf of SCS and its customers, and over the means used to perform the Services. Contractor may cause or permit any subcontractor or other third-party (each referred to herein as a "Subcontractor" and, collectively, as the "Subcontractors") to perform the Services contemplated hereunder without the prior written consent of SCS. Contractor shall (a) remain fully liable to SCS for the actions of any Subcontractors used to perform the Services under this Agreement; (b) be solely liable for any payments due to Subcontractors; and (c) ensure that Subcontractors comply with all obligations of Contractor under this Agreement and perform the Services in accordance with the terms and conditions of this Agreement.

**2. TRANSPORTATION AND LABOR.** Contractor shall use its best efforts to provide the Services, including transportation and labor, that meets industry standards and the terms of the Agreement, including the Exhibits. Such Services shall be under the charge and control of Contractor. Contractor acknowledges and agrees that right and title to the items it is handling on behalf of SCS and its customers shall remain at all times with SCS or its customers.

**3. VALID DRIVER'S LICENSE.** Contractor shall possess, at all times while this Agreement is in force, a valid driver's license issued by the state in which Contractor resides entitling Contractor to legally operate the motor vehicle or vehicles necessary to provide the Services under this Agreement. If at any time under this Agreement, Contractor's driver's license is suspended or revoked for any amount of time, and for any reason whatsoever, Contractor shall immediately notify SCS in writing of such revocation or suspension. In addition, at any time under this Agreement, SCS may request from Contractor a copy of Contractor's driving record. Upon receipt of such a request from SCS, Contractor shall deliver within seventy-two (72) hours a copy of Contractor's driving record.

**4. ACCESS TO CONTRACTOR'S VEHICLE.** Contractor hereby grants SCS or its authorized representatives a right of entry into Contractor's vehicle in order for SCS or its authorized representatives to remove any item or items that Contractor is transporting on behalf of SCS or its customers,

including, but not limited to, all confidential information, documents, records, invoices and inventory related to the Services being provided under this Agreement, in the event of termination of this Agreement or for any reason whatsoever.

**5. PARTNERSHIP AGAINST TERRORISM.** Contractor agrees to conduct a detailed review of its security procedures and to develop a "Customs Trade Partnership Against Terrorism" or "C-TPAT" action plan for the Services that it renders pursuant to this Agreement. The action plan shall adhere to the security-related principles that Customs has published. By entering into this Agreement, Contractor acknowledges that it is or will become promptly compliant with the C-TPAT guidelines.

**6. PAYMENT FOR THE SERVICES.** SCS shall pay Contractor for performing the Services as set forth in Exhibit B. SCS shall be required to pay Contractor only for Services performed in accordance with all of the terms and conditions of this Agreement. Contractor shall comply with the Payment Process as set forth in Exhibit D in order to receive payment.

**7. INDEPENDENT CONTRACTOR.** Contractor shall not be subject to the general supervision or control of SCS and shall be free to set its own business hours and procedures subject to the provisions of this Agreement. Contractor shall have control of its activities with the right to exercise independent judgment as to carrying out the provisions of this Agreement and manner of Contractor's supervision and control of Contractor's agents, servants, Subcontractors and employees. Contractor's relationship with SCS shall be that of an independent contractor and nothing in this Agreement shall be construed to create a partnership, joint venture, agency, employer/employee, or similar relationship between the parties. Further, it is not the intention of this Agreement or the parties to this Agreement to confer a third-party beneficiary right of action upon any third party or entity, and nothing in this Agreement shall be construed to confer upon any third party a right of action under this Agreement or in any manner. Contractor shall not be entitled to any of the benefits SCS or its affiliates may make available to their employees. Contractor shall be solely responsible for all of Contractor's tax returns and tax payments required to be filed with or made to any applicable tax authority with respect to Contractor's performance of the Services and receipt of fees under this Agreement. Because Contractor is an independent contractor, SCS shall not withhold or make payments for social security, make unemployment insurance or disability insurance contributions, or obtain worker's compensation insurance on Contractor's behalf. Neither party is granted any express or implied right or obligation to assume or create any



obligation or responsibility on behalf of or in the name of the other party, or to bind the other party in any manner whatsoever.

**8. LOSS OR DAMAGE.** Liability for risk of loss of or damage to items being transported by Contractor on behalf of SCS or its customers shall at all times remain with Contractor while such items are in Contractor's possession, custody, or control, or the possession, custody or control of any person or entity to which Contractor has delegated any obligation under this Agreement. The value of a loss or damage shall be equal to SCS's customer's actual loss or injury. Contractor shall report all claims of loss or damage in writing to SCS immediately after the occurrence of such loss or damage. SCS may advise Contractor of any concealed loss or damage at any time after learning of such loss or damage. Contractor shall promptly and diligently investigate all claims of such loss or damage and, within seven (7) days of SCS' request, shall provide to SCS copies of all documents which evidence or summarize the investigation. Contractor shall compensate SCS for all claims within thirty (30) days of receiving written notice from SCS (the "Final Payment Period"); provided, however, that SCS may extend the Final Payment Period.

**9. INSURANCE.** Contractor shall carry and maintain at its own expense, in force and effect continuously through the term of this Agreement, the following types of insurance: (i) workers' compensation insurance in an amount not less than the statutory limits for the state(s), country or province in which the Services are to be performed, including employer's liability insurance in an amount not less than three hundred thousand dollar (\$300,000.00); and (ii) comprehensive general liability and automobile liability insurance, including blanket contractual coverage, for bodily injury and tangible property damage with minimum limits of three hundred thousand dollars (\$300,000.00) per occurrence; provided, however, that Contractor's purchase of such insurance shall not in any way limit Contractor's liability under this Agreement. Contractor shall furnish to SCS a certificate of insurance evidencing the dates of expiration of any policies, limits of liability thereunder and, except for workers' compensation, naming SCS as additionally named insured there under. Contractor's policies of insurance shall contain a provision prohibiting modification or cancellation thereof without thirty (30) days advance written notice to SCS. At any time during the term of this Agreement, SCS may request that Contractor deliver, in a form satisfactory to SCS, proof of the above insurance coverage. Upon receipt of such a request, Contractor shall deliver such proof to SCS within seventy-two (72) hours.

**10. USE IN ADVERTISING.** Contractor agrees that it shall not, without prior written consent of SCS in each instance, use in advertising, publicity or otherwise, the name of SCS, its parent company, or its affiliated companies or those of SCS' customers or their affiliates, or represent in any trade name, trademark, directly or indirectly, that any product

or service provided by Contractor has been approved or endorsed by SCS or its parent or affiliated companies or customers.

## **11. REPRESENTATIONS AND WARRANTIES**

**CONTRACTOR WARRANTIES.** Contractor represents and warrants that in its capacity as an independent contractor or agent, but in all cases a vendor, (i) it has effected and/or obtained and will maintain, all necessary governmental or regulatory filings, registrations, business licenses and approvals, including Federal, state and local filings, registrations and approvals, required in connection with this Agreement, and will pay any costs associated therewith; and (ii) it will comply with all laws, legislation, rules, directives, regulations, and governmental requirements applicable to the Services provided by Contractor in its capacity as a vendor and its exercise of its rights and performance of its obligations under this Agreement.

**DISCLAIMER OF WARRANTY.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SCS SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, OR CONDITIONS (EXPRESS, IMPLIED, STATUTORY OR OTHERWISE), INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ACCURACY OR NONINFRINGEMENT OF THIRD-PARTY RIGHTS, OR ANY WARRANTIES THAT MAY ARISE OUT OF THE COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, OR THEIR EQUIVALENTS UNDER THE LAWS OF ANY JURISDICTION.

## **12. CONFIDENTIAL INFORMATION.**

**DEFINITION.** Contractor understands that performance of its obligations hereunder may involve access to confidential, proprietary or trade secret information or materials of SCS or its customers (or their affiliates, licensors, Contractors, vendors, clients, customers or any other third party to whom SCS or its Customers owe a duty of confidentiality), in whatever form, tangible or intangible, whether disclosed or provided before or after the execution of this Agreement (collectively, "Confidential Information").

**RESTRICTIONS.** Contractor (i) shall hold the Confidential Information in confidence; (ii) shall not make the Confidential Information available in any form to any third party; (iii) shall not use the Confidential Information for any purpose other than as necessary to perform its obligations under this Agreement; and (iv) shall take at least the same degree of care that it uses to protect its own confidential and proprietary information of similar nature and importance (but in no event less than reasonable care) to protect the confidentiality and

avoid the unauthorized use, disclosure, publication or dissemination of the Confidential Information.

**EQUITABLE RELIEF.** Contractor agrees that any breach of this Section would cause irreparable harm to SCS or its customers for which monetary damages would not be adequate and, therefore, Contractor agrees that, in the event of a breach of this Section or threat thereof by Contractor, SCS shall be entitled to equitable relief in addition to any remedies it may have hereunder or at law.

**13. INDEMNIFICATION AND HOLD HARMLESS.** Contractor shall indemnify and hold harmless SCS, its officers, directors, employees and agents for any and all loss, damage, injury, claim or expense, including attorneys' fees, resulting from or occurring in connection with the Services provided by Contractor or his agents, servants, Subcontractors or employees. In the event any such loss, damage, injury, or expense, or any claim or demand therefore, is made against SCS, its officers, directors, employees or agents, SCS may withhold from any payments due Contractor, or hereafter to become due under the terms of this Agreement, an amount sufficient in its sole discretion to protect and indemnify it for such loss, damage, injury or expense, including attorneys' fees. SCS, in its sole discretion, may also require Contractor to furnish a surety bond satisfactory to SCS guaranteeing such protection, and such bond shall be furnished by Contractor within five (5) days after written demand by SCS.

#### **14. LIMITATION OF LIABILITY**

**IN NO EVENT SHALL SCS BE LIABLE TO CONTRACTOR OR ANY THIRD PARTY UNDER ANY LEGAL THEORY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND, HOWEVER CAUSED, EVEN IF SCS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**15. TERM AND TERMINATION.** The term of this Agreement is for one (1) year commencing on the Effective Date and shall continue for successive one (1) year terms unless otherwise terminated by either party pursuant to this Section. This Agreement may be terminated for any reason by either party with seven (7) days' prior written notice. SCS may also terminate this Agreement by providing written notice to Contractor, such termination date effective as of the date of such notice, upon (i) Contractor's breach of a material term of this Agreement, including, without limitation, the insurance requirements set forth in Section 9 of this Agreement; or (ii) the institution by or against Contractor of bankruptcy, reorganization, insolvency, liquidation proceedings or any other proceedings for relief under any bankruptcy law or other law for the relief of debtors. The provisions of Section 4 (Access to Contractor's Vehicle); Section 12 (Confidential Information); Section 13 (Indemnification and Hold

Harmless); Section 14 (Limitation of Liability); and Section 15 (Term and Termination); shall survive any expiration or termination of this Agreement.

**16. GOVERNING LAW.** The parties agree that this Agreement shall be interpreted, construed, and enforced according to the laws of the State of Georgia, without giving consideration to Georgia conflict of law and choice of law jurisprudence. The parties further agree that the courts of the State of Georgia shall have exclusive jurisdiction to resolve disputes that may arise between the parties.

**17. CONDITION PRECEDENT TO AGREEMENT EFFECTIVENESS.** As a condition precedent to the effectiveness of this Agreement, Contractor shall execute and deliver to SCS the Contractor Background Verification and Consent form.

**18. NOTICE.** Except where specifically provided otherwise, all notices and other communications under this Agreement shall be in writing and shall be deemed given when delivered by hand or upon confirmed receipt of a facsimile transmission, two (2) days after being deposited with an overnight courier (e.g., UPS), or five (5) days after mailing, postage prepaid, by registered or certified mail, return receipt requested, to the below address or such other addresses as either party shall specify in a written notice to the other.

To SCS:

UPS Supply Chain Solutions, Inc.  
ATTN: Transportation Service Provider Manager

To Contractor:

**19. ASSIGNMENT.** In no event shall Contractor assign this Agreement, or any of Contractor's rights or obligations hereunder, without the prior written consent of SCS. Any purported assignment, transfer, or delegation of this Agreement (or any rights or obligations hereunder), except as permitted herein, shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.

**20. WAIVER.** Waiver by either party of any breach or failure to comply with any provision of this Agreement by the other party shall not be construed as or constitute a continuing waiver of such provision, or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

**21. CONSTRUCTION.** This Agreement has been negotiated by the parties and shall be interpreted fairly in accordance with its terms and without any construction in favor of or against either party.

**22. ORDER OF PREFERENCE.** In the event of a conflict between the terms of this Agreement (including its Exhibits), and any executed document issued hereunder, the terms of this Agreement shall prevail. Any terms and conditions printed on shipping documents such as bills of lading or delivery receipts shall be subordinate and subject to the terms and conditions of this Agreement.

**Exhibit B**  
**UPS Supply Chain Solutions, Inc.**  
**Payment**

**I. PAYMENT**

**1. SCS agrees to pay Contractor the following:**

a. **Mileage Rate.** When Contractor uses its own vehicle (auto, truck, etc.), SCS agrees to pay Contractor \$\_\_\_\_\_ for every pick up and/or delivery within a \_\_\_\_\_ ( ) mile. For every pick up and/or delivery which is more than \_\_\_\_\_ ( ) miles, SCS agrees to pay Contractor \_\_\_\_\_ cents ( ¢) per mile for the entire pick-up and/or delivery, instead of, and not in addition to, the payment paid for pick-up and/or delivery within the above-stated mileage radius of the pickup location.

All payment rates are to be determined at the time the service is rendered and in accordance with industry standard system generated mileage (currently PC Miler). Mileage calculations between points shall be based solely upon the SCS system generated mileage.

Subject to the terms of this paragraph, SCS agrees to pay Contractor fifty percent (50%) of the applicable mileage rate if, through no fault of Contractor, Contractor uses its best efforts to make the delivery but is unsuccessful and Contractor is requested to return the part to the pickup point. Subject to the terms of this paragraph, SCS agrees to pay Contractor the [mileage rate] if, through no fault of Contractor, Contractor uses its best efforts to make the pickup but is unsuccessful. In order to receive payment in either of the aforementioned circumstances, Contractor agrees to notify SCS immediately of such delivery or pickup failure and SCS has specifically stated to Contractor that Contractor will receive payment.

b. **Multiple Stops.** When Contractor has multiple pick-ups or deliveries, full payment shall be paid for the pick-up or delivery that is furthest from the pickup location. Each additional stop made within a ten (10) mile radius is paid at the rate of \_\_\_\_\_ ( ) dollars per stop. Each additional stop within the same building or at the airport is paid at the rate of \_\_\_\_\_ ( ) dollars per stop.

If the additional stop is more than ten (10) miles from the prior stop, then SCS will pay the actual mileage from the point that Contractor leaves the prior stop to the additional stop. At no time will SCS pay Contractor for second stops that exceed the rate that would be paid if the pickup or delivery had been paid at the standard rate.

c. **Consolidation.** Multiple service orders originating and ending at the same addresses will be treated as one job and will be paid as one job and the other(s) will be no charged. If the total weight of all the consolidated orders is greater than 50 lbs., then the extra weight payment is applicable to the total weight. If the job involves picking up two orders from different airlines at the same airport, then the second job will be paid as a 2nd stop same airport/building.

d. **Special Vehicle Charge.** If the service order requires a special vehicle that has been approved and requested by SCS, SCS agrees to pay Contractor an additional \_\_\_\_\_. A special vehicle includes, but is not limited to, straight trucks, bobtails, cargo vans and trucks with lift gated and tractor-trailers. Special vehicles do not include pick-up trucks with bed-covering shells, sport utility vehicles and vans converted from passenger usage.

e. **Additional/Second Airway Bill.** When delivering service orders to an airport, the first airway bill that is filled out by Contractor will be included as part of the per mile transportation payment. If SCS requests that Contractor fill out an additional/second airway bills to ensure shipments are tendered to the proper airlines and transported to the correct destination airport, SCS will pay Contractor \$1.00 per additional/second airway bill that is properly completed by such Contractor.

**2. Parts Exchange & Swap-out Services.** Contractor will be paid for each individual parts exchange/swap-out at a customer location at the rate of ten dollars (\$10.00) per exchange. This payment includes thirty (30) minutes time on site and the return of the original or defective part to the nearest drop point. The parts exchange/swap-out fee will be paid in addition to the transportation payment. Contractor is responsible to perform only parts exchange/swap-out service if it has been properly certified for the applicable service.

3. **Extra-Weight Payment.** Each individual pick-up and/or delivery from a customer location that exceeds fifty (50) pounds will entitle Contractor to an extra-weight payment. SCS agrees to pay Contractor \_\_\_\_\_ cents (\$\_\_\_\_) per pound for every pound over fifty (50) pounds, starting with the fifty-first (51<sup>st</sup>) pound. There is no extra-weight bonus for pounds one (1) through fifty (50).

4. **Wait Time Pay.** Contractor will use its best efforts to minimize any wait time associated with pick ups or deliveries. SCS will not pay Contractor for the first fifteen (15) minutes of wait time. SCS agrees to pay Contractor \_\_\_\_\_ cents (\$\_\_\_\_) per minute, starting on the sixteenth (16<sup>th</sup>) minute after Contractor's arrival, as wait time pay ("Wait Time Pay"); provided, however, that Contractor notifies SCS immediately upon commencement of such wait time and that SCS approves such wait time. SCS will pay Wait Time Pay to Contractor only for delays caused by the customer and under no circumstances for delays caused by Contractor.

5. **Recovery From Airlines.** On in-bound shipments that are to be recovered from commercial flights, it is the responsibility of Contractor to verify the flight's arrival time. SCS is not required to pay attempted recovery payments on late flights, with the exception of the last inbound scheduled flight for which SCS will pay for attempted recovery. Contractor should attempt to meet the last flight of the night at its regularly scheduled arrival time.

6. **After Hours and Holidays.** After hours are defined as those times that fall between the hours of \_\_\_\_\_ am/pm and \_\_\_\_\_ am/pm Monday through Friday and/or \_\_\_\_\_ am/pm Saturday and Sunday. Holidays are defined as client-observed holidays. SCS agrees to pay Contractor an additional \_\_\_\_\_ (\$\_\_\_\_\_).



**Exhibit C**  
**UPS Supply Chain Solutions, Inc.**  
**Service Specifications**

**I. REGULATORY.**

1. Contractor agrees not to receive, store or transport any hazardous materials for SCS or its customers without obtaining prior written consent from SCS.
2. Contractor shall report immediately to SCS the receipt of any unapproved hazardous materials.
3. Contractor shall be certified in recognizing hazardous materials through a regulatory HAZMAT program.
4. Contractor shall participate in a U.S. Transportation and Safety Administration ("TSA") 1548 program and maintain up-to-date program records for future reference.
5. Contractor shall provide to SCS all proof-of-identity documentation and any other applicable governmental registrations or licenses required under to Section 11 of Exhibit A. Contractor shall participate in a TSA 1548 programs and follow the TSA requirements when performing the over-the-counter and general airfreight pick-ups, deliveries, tenders and recoveries for SCS.

**II. CONTRACTUAL OBLIGATIONS.**

1. Contractor shall validate the part numbers and inspect the exterior packaging of all packages and parts for visible damage at the time of pick-up. Contractor shall note and report any damage to SCS.
2. Contractor shall communicate any service delays to SCS. Contractor agrees to complete all deliveries by the customer imposed deadline.
3. Contractor agrees to maintain at its own expense mobile telecommunications capability to enable Contractor to receive messages from SCS.
4. Contractor agrees to provide the SCS dispatching location of the following information before departing the pick-up point:
  - a. Changes in the pieces and/or weight of the shipment; and
  - b. Any delays at the pick-up point, especially if such delays affect the flight or the deadline in any way.
5. Contractor agrees to call the SCS dispatching location if there are any delays such as:
  - a. Late arrival time;
  - b. Airline delays in making the shipment available; or
  - c. Shipment no show: call the dispatching location and provide the name of the airline employee who confirmed that the package was a "no show."
6. Contractor agrees to keep packages in a safe area if packages are held overnight.
7. Contractor agrees to equip all of his vehicles with adequate material to secure and move load safely without damage.

**III. SAFETY AND SECURITY.**

1. Contractor agrees that access to SCS customer parts shall be limited to Contractor, SCS and its authorized representatives, and government officials.



2. To comply with Federal and State security requirements, Contractor agrees to transport and store the items inside a vehicle or inside a covered bed and to lock the vehicle or compartment in which the items are stored.

3. For safety and security reasons, Contractor shall perform the Services without the influence of drugs and alcohol and shall maintain appearance and behavior in a professional manner.

**IV. APPEARANCE GUIDELINES.**

1. Contractor shall maintain professional appearance and behavior, free from alcohol and drugs.

**Exhibit D**  
**UPS Supply Chain Solutions, Inc.**  
**Payment Process**

1. The Contractor Payment Process (the "Process") is in place to help Contractor receive payment for contracted services in a complete and efficient manner.

2. In order to expedite payment for work performed, Contractor agrees to the following:

a. Submission of Proof of Delivery ("POD"). Contractor shall fax or deliver to SCS all completed PODs (examples of PODs include bills of lading and air waybills). PODs should be submitted to SCS on a daily basis, and no later than two (2) days after completion of the Services.

b. Contractor shall submit PODs pursuant to service order number. In addition, the following information shall appear on each POD submitted to SCS:

(i) The signature and the printed name of the recipient or person signing for the delivery.

(ii) The date of the delivery.

(iii) The time delivery was accepted by the recipient.

(iv) A description of where the delivery was made, such as the department or area where the package was delivered.

(v) The service order.

(vi) Contractor's supplier number.

(vii) All additional amounts owing to Contractor, including weight, waiting time, tolls, but not including mileage, shall be written on the applicable POD, plus the supporting documents for every service order listed on Contractor's invoice.

c. Weekly Invoice. Based upon the PODs that Supplier delivers to SCS during the course of the work week (beginning on Wednesday at 18:01 local time and ending on Wednesday at 18:00 local time), SCS will print an invoice that will be made available to Supplier no later than the immediately following Saturday at noon.

d. Corrections to the Invoice/PODs. Supplier will have from the time the invoice is made available on Friday until the following Tuesday at 4:00 P.M. (the "Re-work Period") to submit corrections to the invoice or missing PODs. For service orders listed on the invoice that are missing PODs, the invoice will indicate either "Missing POD" or "No POD/air waybill."

e. SCS reserves the right to deny payment for the Services that are not performed within the provisions of this Agreement if it is determined that the failure was a Supplier-controllable failure.

f. Contractor will be paid by SCS on its vendor payment schedule.

# **EXHIBIT 2 TO SEGUERRA DECLARATION**

Vendor # \_\_\_\_\_  
 Branch: LAX

## TRANSPORTATION AGREEMENT

Revision Date 02/22/2001

AGREEMENT by and between \_\_\_\_\_ with an  
 office at \_\_\_\_\_ hereinafter  
 called "CONTRACTOR" and UPS Logistics Group with an office at \_\_\_\_\_  
 a UPS Logistics Group Corporation, hereinafter called "CLIENT".

## WITNESSETH

WHEREAS, CLIENT is engaged in the air freight forwarding business and for such purpose requires pick up and delivery service in the city of \_\_\_\_\_ and its vicinity; and WHEREAS, the CONTRACTOR, is willing and able to render such pick up and delivery service as CLIENT requires,

NOW, THEREFORE, it is mutually agreed between the parties as follows:

## 1. CONTRACTOR'S

## SERVICES

The CONTRACTOR agrees that it and its agents, servants, or employees will during the term of this AGREEMENT, perform all such pickup/delivery services and or parts exchange services as may be required or requested by the CLIENT in connection with the operation of the business of the CLIENT, or of any and all of its Affiliates, as the CLIENT may designate, in accordance with provisions of the Addendum entitled "Job Specifications Addendum" attached hereto as Schedule "-B-" and incorporated herein by this reference. Furthermore it is understood and agreed that CONTRACTOR shall maintain and exercise full control over the services performed by CONTRACTOR for the CLIENT, and over the means used to perform said services.

The CONTRACTOR agrees to obtain and maintain at his own expense by purchase or rental, a mobile radio, telephone pager and/or a transmitting wireless mobile computer capable of receiving the messages transmitted by the CLIENT.

## 2. MEANS OF

## CONVEYANCE,

## LABOR

The CONTRACTOR shall provide and use for such service means of conveyance which are in accordance with provisions of Schedule "-B-", are in the exclusive charge and control of the CONTRACTOR and shall furnish an adequate supply of labor which shall not be subject to the control or supervision of CLIENT.

## 3. PAYMENT FOR

## and upon

## SERVICE

## the

CLIENT shall pay for the service furnished to it in accordance with this AGREEMENT receipt of all documentation in a manner and form in accordance with this Agreement at following rates:

Refer to Rate Addendum

For services rendered, the CLIENT shall pay the CONTRACTOR in accordance with provisions of the Addendum entitled "Rate Addendum" attached hereto as Schedule "-A-" and incorporated herein by this reference.

## 4. COMPLIANCE

## WITH GOVERNMENTAL

## REGULATIONS

CONTRACTOR assumes sole responsibility for compliance with all economic, operational, safety, and other requirements imposed by Federal, State, County, Municipal, or other law or regulatory body, relating to the surface operations hereunder; and CONTRACTOR agrees to reimburse CLIENT'S entire costs, including but not limited to the amounts of fines or penalties and costs of counsel, arising from any assertion or finding of lack of compliance with the aforesaid laws and/or regulations in respect to the surface operations hereunder. CONTRACTOR agrees that CLIENT

**REDACTED**

may deduct the amounts due it hereunder from any monies otherwise owed to CONTRACTOR, in full or partial payment of its obligation to reimburse to CLIENT its costs as defined herein above.

5. INSURANCE

The CONTRACTOR shall carry and maintain at its own expense Automobile Liability insurance against liability arising from the maintenance or use of all owned, non-owned and hired automobiles and trucks in such forms and amounts as CLIENT may require or in such forms and amounts as required by law whichever is higher. The CONTRACTOR shall furnish to CLIENT a certificate from all insurance carriers showing CLIENT as additionally insured, the dates of expiration of any policies, limits of liability thereunder, and providing said insurance will not be cancelled or changed until at least thirty (30) days written notice is given to CLIENT.

CONTRACTOR has to procure and show proof they are providing Workmen's Compensation and liability insurance for themselves and their employees.

6. INDEMNIFICATION

The CONTRACTOR hereby assumes the entire responsibility and liability in and for any and all damage or injury of any kind or nature whatever to all persons, whether employees or otherwise, and to all property, growing out of resulting from the execution of work provided for in this AGREEMENT or occurring in connection therewith, and agrees to indemnify and save harmless CLIENT, directors, shareholders, its agents, and employees from and against any and all loss, expense, including attorneys' fees, damage or injury growing out of or resulting from or occurring in connection with the execution of the work herein provided for or occurring in connection with or resulting from the use by the CONTRACTOR, his agents or employees, or any materials, tools, implements, appliances, scaffolding, ways or hoists, elevators, works or machinery or other property of CLIENT, whether the same arise under the common law or the so-called worker's compensation law (which may be in effect at a locality in which work is situated) or otherwise. In the event of any such loss, expense, damage or injury, or if any claim or demand for such damage is made against CLIENT, its agents, servants or employees, CLIENT may withhold from contractor any payment due, or hereafter to become due, under the terms of this AGREEMENT, an amount sufficient in its judgment to protect and indemnify it from any attorneys' fees, loss, damage or injury, or CLIENT in its discretion, may require the CONTRACTOR to furnish a surety bond satisfactory to CLIENT guaranteeing such protection, a bond shall be furnished by the CONTRACTOR within five (5) days after written demand has been made therefor.

7. HOLD HARMLESS

CLIENT agrees to hold CONTRACTOR harmless, up to an amount that shall not exceed CLIENT'S contractual limitation of liability to the shipper of the shipment for all risks of loss or damage to shipments tendered to CLIENT, including the liability arising under the CONTRACTOR'S agreement to indemnify CLIENT for any such loss or damage, while such shipments are in the custody or control of the CONTRACTOR.

8. TERMINATION

This AGREEMENT may be terminated for any reason by either party by giving the other party 30 days notice and may be terminated for cause at any time upon notice.

9. CONTRACTOR'S

SERVICE FOR OTHERS

Nothing herein shall prevent the CONTRACTOR from performing any pick up/delivery service for any

other person, firm, or CLIENT. During the term of this AGREEMENT, or any time thereafter,

CONTRACTOR shall not utilize, convey or disseminate any information regarding the CLIENT'S

customer lists, mode or methods of operations, or any other proprietary information of the CLIENT to any other person entity directly or indirectly involved with air delivery, warehousing, distribution,

messenger service, or any other business which may be competitive with the CLIENT. A violation of any restrictive covenant contained within this AGREEMENT shall cause

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irreparable harm to the CLIENT. The CONTRACTOR agrees that the CLIENT shall be entitled to all legal and equitable remedies including, but not limited to, specific performance of this AGREEMENT, or an injunction without proof of special damages.

#### 10. ASSIGNABILITY

No assignment of this AGREEMENT shall be made by either party without the consent in writing of the other.

11. INDEPENDENT CONTRACTOR. SUPPLIER is retained by CLIENT only for the purpose of performing the obligations set forth in this Agreement and SUPPLIER's relationship to CLIENT is that of an independent contractor. SUPPLIER shall not be considered, under any circumstances, to be an employee of CLIENT and shall not be entitled to participate in any plans, arrangements, or distributions of CLIENT in connection with any pension, stock, bonus, profit-sharing or any other fringe benefits paid or made available to regular employees of CLIENT. SUPPLIER shall not be subject to the general supervision or control of CLIENT and shall be free to set its own business hours and procedures subject to the provisions of the Agreement. SUPPLIER shall have control of its activities with the right to exercise independent judgment as to carrying out the provisions of this Agreement and manner of SUPPLIER's supervision and control of its employees. In its capacity as an independent agent, SUPPLIER shall make arrangements, and shall be solely responsible for the payment of income taxes, social security taxes, pension, stock, bonuses, vacation, profit-sharing or any other fringe benefits for SUPPLIER's employees.

This Agreement does not constitute SUPPLIER as the agent or legal representative of CLIENT. Neither party is granted any express or implied right or obligation to assume or create any obligation or responsibility on behalf of or in the name of the other party, or to bind the other party in any manner whatsoever.

Any modifications or conversions made by SUPPLIER to its property including, but not limited to, offices, vehicles for the purpose of performing its obligations under this Agreement shall be for the sole and exclusive benefit of SUPPLIER and such benefit shall not, expressly or implied, inure to CLIENT.

IN WITNESS WHEREOF, the parties have duly executed this AGREEMENT this \_\_\_\_\_ day

of \_\_\_\_\_, 20\_\_\_\_

CONTRACTOR

CLIENT

By       

By       

Witness       

Witness       

**REDACTED**



## SCHEDULE "A" RATE ADDENDUM

The following is an agreement dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between UPS Logistics Group (hereinafter referred to as "CLIENT") and \_\_\_\_\_ hereinafter referred to as "CONTRACTOR". This Addendum entitled "Rate Addendum," has been, and herein is, incorporated by reference into the "Independent Contractor Agreement" between the CLIENT and the CONTRACTOR entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

### A. RATES

1. The CLIENT agrees to pay the CONTRACTOR the following:
  - a. When the CONTRACTOR uses his own vehicle (auto, truck, etc.), the CLIENT agrees to pay the CONTRACTOR \$ \_\_\_\_\_ for every pick up and/or delivery within a \_\_\_\_\_ mile radius of the applicable airport. For every pick up and/or delivery which is outside of the \_\_\_\_\_ mile radius of the applicable airport, the CLIENT agrees to pay the CONTRACTOR \_\_\_\_\_ per mile for the entire pick up and/or delivery, instead of, not in addition to, the rate paid for pick up and/or delivery within the above stated mileage radius of the applicable airport.
  - b. When the CONTRACTOR has multiple pickups or deliveries, full rate is paid for the pickup or delivery that is furthest from the airport along the route. Each additional stop made in a different city or town within a \_\_\_\_\_ mile radius of the route is paid at the rate of \_\_\_\_\_ dollars per stop. Each additional stop within the same building or at the airport is paid at the rate of \_\_\_\_\_ dollars per stop. If the additional stop is more than \_\_\_\_\_ miles from the route, the actual one way mileage from the point that the CONTRACTOR leaves the route to the additional stop will be paid. At no time will the CLIENT pay the CONTRACTOR a rate for second stops that exceeds the rate that would be paid if the pickup or delivery had been paid at the standard rate.
  - c. When the CONTRACTOR uses a vehicle leased by the CLIENT, the CLIENT agrees to pay the CONTRACTOR \$ \_\_\_\_\_ for every pick up and/or delivery within a \_\_\_\_\_ mile radius of the applicable airport. For every pick up and/or delivery which is outside of the \_\_\_\_\_ mile radius of the applicable airport, the CLIENT agrees to pay the CONTRACTOR \_\_\_\_\_ Cents \_\_\_\_\_ per mile for the entire pick up and/or delivery, instead of, not in addition to, the rate paid for pick up and/or delivery within the above stated mileage radius of the applicable airport.

All payment rates are to be determined at the time the service is rendered and in accordance with the CLIENT system generated mileages and or the "Flat-Rate" sheets provided by the CLIENT. Mileage calculations between points not included on the "Flat-Rate" sheets shall be based solely upon the CLIENT system generated mileages. Any adjustment in said rates must be mutually agreed upon in writing by a duly authorized member of CLIENT'S management team and CONTRACTOR.

2. **Parts Exchange Services.** Each individual parts exchange at a customer location will be paid at the rate of \_\_\_\_\_ dollars for each part exchanged. This rate includes 30 minutes time on site and the return of the original or defective part to the originating warehouse location. The Swap out fee will be paid in addition to the standard transportation rates.
3. **Extra-Weight Bonus.** Each individual pick up and/or delivery from a customer/location that exceeds fifty (50) pounds will entitle the CONTRACTOR to an Extra-Weight Bonus. The CLIENT agrees to pay the CONTRACTOR Four Cents (.04c) per pound for every pound over fifty pounds (50 lbs.), starting with the fifty-first pound (51<sup>st</sup> lb.). There is no Extra-Weight Bonus for pounds one (1) through fifty (50).
4. **Wait-Time Pay**
  - a. **Pre-Scheduled Pick Ups.** There is no thirty (30) minute grace period before the CONTRACTOR is entitled to wait time pay on pre-scheduled pick ups. The CLIENT agrees to pay \_\_\_\_\_ Cents per minute to the CONTRACTOR from the time of his arrival until departure with the package/parcel, to compensate for the CONTRACTOR'S waiting time.
  - b. **Non Pre-Scheduled Pick Ups.** The CLIENT is entitled to a fifteen (15) minute grace period on all non pre-scheduled pick ups before the CONTRACTOR is entitled to any Wait Time Pay. The CLIENT agrees to pay the

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CONTRACTOR \_\_\_\_\_, per minute, starting on the sixteenth (16th) minute after arrival on non pre-scheduled pick ups to compensate for the CONTRACTOR'S waiting time.

The term "Pre-Scheduled" refers to pick ups from a customers location (EXCLUDING AIRPORT PICK UPS) that are scheduled more than two (2) hours prior to the actual pick up time. The CONTRACTOR is entitled to Wait Time Pay only for delays caused by the customer, not delays caused by the CONTRACTOR, his agents or employees.

**5. Recovery From Airlines**

a. On inbound shipments that are to be recovered off commercial flights, it is the responsibility of CONTRACTOR to verify in the flight's arrival time. The CLIENT will not pay attempt charges on late flights. The only exception to that will be on the last flight scheduled in of the night. The CLIENT will pay for attempts and the CONTRACTOR is expected to meet the last flight of the night at its regularly scheduled arrival time.

**6. Two Person Deliveries.**

When the CLIENT requires a second CONTRACTOR to assist with a pickup or delivery service then the CLIENT agrees to pay the second CONTRACTOR in the following manner:

- a. If the secondary CONTRACTOR uses his own vehicle the contractor shall be paid the standard mileage rate as outlined in sections 1a and 1b.
- b. If the secondary CONTRACTOR rides with the primary CONTRACTOR then the secondary CONTRACTOR will be paid \_\_\_\_\_ per mile.

The CLIENT reserves the right to refuse payment for services that are not performed in accordance with

FAA Federal Aviation Regulation Part 109.

1. The CLIENT reserves the right to refuse payment for services that are not performed within the CLIENT requested time frame if it is determined that said failure was a result of a CONTRACTOR controllable failure.
2. The CLIENT reserves the right to refuse payment for services if the CONTRACTOR is unable to provide a copy of the CLIENT'S Bill of Lading and or a copy of the Airline Air Waybill with their manifest.

The CONTRACTOR agrees that he must submit to the CLIENT manifests on a weekly basis. A week begins at 12:01 A.M. on Thursday and ends on the following Wednesday at midnight. The CONTRACTOR is required to transmit the manifests on a weekly basis and to insure that they are received by the CLIENT on, or before, Wednesday of the week following the applicable Wednesday. The CLIENT is not required to pay more often than one (1) time for every two (2) weeks' of manifests submitted by the CONTRACTOR.

**C. MODIFICATION**

The parties hereto, the CONTRACTOR and the CLIENT, agree that this Rate Addendum is given and accepted upon the express condition that it cannot in any manner be changed, altered, varied, or modified, without the written consent of both the CLIENT and CONTRACTOR, except that the CLIENT can increase or decrease all Rates upon ninety (90) days written notice to the CONTRACTOR. No modification of this Rate Addendum, except for modification of Rates, shall be binding upon the parties unless written consent is obtained. The term "Rates" refers to all methods of compensation including, but not limited to Rates, extra-weight bonuses and wait-time pay.

**D. DURATION AND TERMINATION**

This Rate Addendum shall continue in full force and effect for the remaining term of the current Independent Contractor Agreement; for the term of one (1) year from the date hereof, and for successive periods of one (1) year thereafter, unless the Independent Contractor Agreement is terminated by either party or upon thirty (30) days' WRITTEN notice of termination at any time by either party. In the event the Independent Contractor Agreement is terminated, this Rate Addendum is automatically terminated on the same date.

By this language, the parties intend for the terms of the Independent Contractor Agreement and the Rate Addendum to run concurrently and for both Agreements to expire, or renew, at the same time.

IN WITNESS WHEREOF, the parties have duly executed this ADDENDUM this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_.

CONTRACTOR

CLIENT

By   
Witness 

By \_\_\_\_\_  
Witness \_\_\_\_\_

**REDACTED**

**SCHEDULE "B"**  
**Job Specifications Addendum**

The following is an Addendum dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between UPS Logistics Group (hereinafter referred to as "CLIENT") and \_\_\_\_\_ hereinafter referred to as "CONTRACTOR". This Addendum entitled "Job Specifications Addendum," has been, and herein is, incorporated by reference into the "Independent Contractor Agreement" between the CLIENT and the CONTRACTOR entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**A. Regulatory**

1. Vehicles must be covered, no open bed trucks. Vehicle locking mechanisms must be in working condition.
2. CONTRACTOR is required to be certified on the CLIENT'S approved FAR 109 program

**B. Job Requirements**

1. Pick-ups must be made immediately after dispatch is received. This is true regardless of what time the flight departs. Our customers expect a timely response. You must tell the dispatching location the following information before departing the pick-up point:
  - a. Changes in the pieces and/or weight of the shipment.
  - b. Any delays at the pick-up point, especially if it affects the flight or the deadline in any way.
2. When tendering packages to an airline you must tell the dispatching location the following information within 10 minutes of completing the tender:
  - a. Flight number confirmation.
  - b. Air Waybill information.
  - c. Any information regarding delays or flight changes.
3. Deliveries must be made no later than the deadline time. Call the dispatching location from the airport if there are any delays such as:
  - a. Late arrival time.
  - b. Airline delays in making the shipment available.
  - c. Shipment no show; Call the dispatching location and tell them the name of the airline employee who confirmed that the package was a "no show."
4. Upon delivery call the dispatching location within 10 minutes and give them:
  - a. The time the shipment was delivered.
  - b. The name of person signing for the shipment.
  - c. The department, building or area the shipment was delivered to.
5. All job requirements outlined in the UPS LG Supplier Job Specifications document must be followed..

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C. Appearance

1. The CONTRACTOR is required to meet the CLIENT'S appearance standards which are as follows:
  - a. Collared shirt.
  - b. Pants or walking shorts that are clean and in good repair
  - c. Shoes that are clean and in good repair

D. Quality Metrics

1. The CONTRACTOR is required to meet a quarterly Controllable Ontime performance must be 99.60% of total activities performed.
2. The CLIENT may provide the CONTRACTOR with a list of all failures that are considered CONTRACTOR controllable failures.

IN WITNESS WHEREOF, the parties have duly executed this ADDENDUM this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_\_.

CONTRACTOR

CLIENT

By /

By \_\_\_\_\_

Witness /

Witness \_\_\_\_\_

**REDACTED**

# **EXHIBIT 3 TO SEGUERRA DECLARATION**

**USA Communication  
Number 255**



UPS SCS COMMUNICATIONS TEMPLATE

<b>Europe Communication #</b>		<b>00-0000</b>		<b>Global Communication #</b>		<b>00-0000</b>	
<b>Intended Audience:</b>		RTC's					
<b>Account Specific Y or N</b>		N		<b>Account Name</b>			
<b>Subject:</b>		= Do's and don'ts related to dispatch of Independent Contractors from the Legal Department					
<b>Date Posted:</b>				<b>Date of Draft</b>		03/29/05	
<b>Author:</b>		= UPS-SCS Legal Dept.					
<b>Correlating Training Module/Document</b>							

RTC Management,

UPS-SCS needs a signoff by each and every dispatcher, dispatch sup, TSPM and RTC Manager acknowledging their receipt and compliance of acceptable RTC behavior related to interaction with independent contractors.

#### **Do's and Don'ts When Interacting/Dispatching Independent-Contractor Couriers**

<b>Do's</b>	<b>Don'ts</b>
Allow couriers to choose own schedule and hours of work  Allow couriers to take breaks whenever they choose  Allow couriers to take off as much time as they want  Allow couriers to work as much or as little as they want	Do <u>not</u> require set schedules for couriers  Do <u>not</u> instruct couriers not to take lunch or restroom breaks or time off (e.g., vacation) during a certain time
Leave it up to couriers to achieve a pickup/delivery by his/her own strategy and methods  Make clear that any specific deadlines and/or instructions are "customer-imposed requirements"	Do <u>not</u> direct or instruct couriers in how to perform duties or accomplish a job
Allow couriers to choose the order in which they make pickups or deliveries (provided all deadlines can be met)	Do <u>not</u> direct or require couriers to make pickups or deliveries in a certain order





## UPS SCS COMMUNICATIONS TEMPLATE

**Do's and Don'ts When Interacting/Dispatching Independent-Contractor Couriers**

<b>Do's</b>	<b>Don'ts</b>
Allow couriers to select the most appropriate and efficient route to enable timely pickup or delivery (it is okay to notify couriers of traffic if known)	Do <u>not</u> instruct or require couriers to drive a particular route
Follow revised contract regarding conduct and attire	Do <u>not</u> instruct couriers on hygiene, dress or attitude (except in the most egregious situations)  Do <u>not</u> discipline couriers for not wearing uniforms, hygiene, etc.  Do <u>not</u> require couriers to wear uniforms or to adhere to a particular dress code (except general guidelines as contained in revised contract)
Allow couriers to accept/turn down jobs at their discretion  If courier declines job, give next person on list the opportunity	Do <u>not</u> require couriers to accept a particular job or threaten termination of services if courier declines  Do <u>not</u> require couriers to show up at business location in order to be dispatched  Do <u>not</u> require couriers to call in each day  Do <u>not</u> require couriers to commit to certain number of jobs or hours for company  Do <u>not</u> require couriers to attend meetings (Do not have couriers meetings, if possible)
Okay to ask couriers to provide notification if they cannot make timely pickups/deliveries	Do <u>not</u> require couriers to provide regular progress reports
Allow couriers to use whatever car/truck they want to make pickups/deliveries	Do <u>not</u> require couriers to own or utilize a particular type of vehicle
Allow couriers to negotiate special charges for use of special equipment	Do <u>not</u> require use of special equipment or supply any equipment, tools, or apparel to couriers
Allow couriers to learn how to perform services on their own time	Do <u>not</u> train couriers on how to do job or with respect to company policies, safety issues, etc.



## UPS SCS COMMUNICATIONS TEMPLATE

**Do's and Don'ts When Interacting/Dispatching Independent-Contractor Couriers**

Do's	Don'ts
	Do <u>not</u> distribute company policies or manuals to couriers
Allow couriers to work for other companies, including other courier companies and to decide when and for whom s/he chooses	Do <u>not</u> require couriers to perform services exclusively for SCS
Encourage couriers to obtain business licenses and operate as their own businesses	
Identify couriers to customers and others as "independent contractors"	<p>Do <u>not</u> refer to couriers as employees or use language that suggests they are employees (e.g., "hire" or "fire")</p> <p>Do <u>not</u> permit couriers to hold themselves out as employees (e.g., business cards or other association with company)</p>
Treat couriers as non-employees, vendors, or other outside entity at all times	<p>Do <u>not</u> provide couriers with keys to buildings or allow them to wander facility unescorted or use company equipment</p> <p>Do <u>not</u> provide passwords to computers</p> <p>Do <u>not</u> allow couriers to receive mail or correspondence at company facilities</p> <p>Do <u>not</u> invite or permit couriers to attend company-sponsored events (social or otherwise)</p>



UPS SCS COMMUNICATIONS TEMPLATE

**Distribution History**  
**Reason For Redistribution**

**Update**

1.	
2.	
3.	
4.	